

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1638 be amended to read as follows:

1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:

3 "SECTION 1. IC 23-1-22-1 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) **Except**
5 **as provided in IC 24-4-12**, every corporation incorporated
6 under this article has the purpose of engaging in any lawful
7 business unless a more limited purpose is set forth in the
8 articles of incorporation.

9 (b) A corporation engaging in a business that is subject to
10 regulation under another statute of this state may incorporate
11 under this article unless provisions for incorporation of
12 corporations engaging in that business exist under that statute.

13 SECTION 2. IC 23-18-2-1 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) **Except**
15 **as provided in IC 24-4-12**, a limited liability company may be
16 organized under this article and may conduct business in any
17 state for any lawful purpose unless a more limited purpose is set
18 forth in its articles of organization.

19 (b) A limited liability company must comply with any
20 statute that regulates the limited liability company's business.

21 SECTION 3. IC 24-4-12 IS ADDED TO THE INDIANA
22 CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 1999]:

24 **Chapter 12. Corporate and Limited Liability Company**

Agriculture

Sec. 1. As used in this chapter, "agricultural land," means land used for farming.

Sec. 2. As used in this chapter, "authorized farm entity" means an entity:

- (1) with ten (10) or fewer shareholders;**
- (2) whose shareholders are all natural persons or estates;**
- (3) whose shares are all of one (1) class; and**
- (4) whose revenues from rent, royalties, dividends, interest, and annuities do not exceed twenty percent (20%) of the entity's gross receipts.**

Sec. 3. As used in this chapter, "entity" means a corporation or limited liability company.

Sec. 4. As used in this chapter, "family farm" means an unincorporated farming unit owned by one (1) or more persons residing on the farm or actively engaging in farming.

Sec. 5. As used in this chapter, "family farm entity" means an entity:

- (1) founded for the purpose of farming and the ownership of agricultural land;**
- (2) in which the majority of the voting stock or voting rights are held by a majority of the shareholders who are members of a family related to each other within the third degree of kindred;**
- (3) at least one (1) of whose shareholders is a person who is residing on or actively operating the farm or who has resided on or has actively operated the farm; and**
- (4) that does not have a shareholder that is a corporation.**

Sec. 6. As used in this chapter, "farming," means the cultivation of land for the production of:

- (1) agricultural crops;**
- (2) livestock or livestock products;**
- (3) poultry or poultry products;**
- (4) milk or dairy products; or**
- (5) fruit or other horticultural products;**

but does not include the production of timber or forest products or a contract under which a processor or distributor of farm products or supplies provides spraying, harvesting, or other farm services.

Sec. 7. As used in this chapter, "hog confinement facility" means real estate used for the breeding, farrowing, and raising of swine.

1 **Sec. 8. As used in this chapter, "shareholders" includes**
 2 **the stockholders of a corporation and the members of a**
 3 **limited liability company.**

4 **Sec. 9. As used in this chapter, "shares" includes stock**
 5 **in a corporation and membership interests in a limited**
 6 **liability company.**

7 **Sec. 10. Except as otherwise provided in this chapter, a:**

8 **(1) corporation may not be formed or licensed under**

9 **IC 23-1; and**

10 **(2) limited liability company may not be formed under**

11 **IC 23-18;**

12 **for the purpose of owning, leasing, holding, or otherwise**
 13 **controlling agricultural land to be used in the business of**
 14 **agriculture.**

15 **Sec. 11. The following are exempt from this chapter:**

16 **(1) The cultivation of edible fruits, vegetables, or**
 17 **mushrooms if the cultivation occurs within a**
 18 **greenhouse or other enclosed or semi-enclosed**
 19 **structure.**

20 **(2) A facility acquired by an entity for the purpose of**
 21 **feeding poultry for the production of meat or eggs.**

22 **(3) A national or state chartered bank or trust**
 23 **company authorized to do business in Indiana if the**
 24 **national or state bank or trust company purchases**
 25 **agricultural lands within the state through a pooled**
 26 **investment fund formed from assets from retirement,**
 27 **pension, profit sharing, stock bonds, or other trusts.**

28 **(4) Agricultural land and land capable of being used**
 29 **for farming that:**

30 **(A) was owned by an entity as of July 1, 1974,**
 31 **including the normal expansion of the ownership**
 32 **at a rate not to exceed twenty percent (20%),**
 33 **measured in acres, in any five (5) year period; or**

34 **(B) is leased by an entity in an amount, measured**
 35 **in acres, not to exceed the acreage under lease to**
 36 **the entity as of July 1, 1974, and the additional**
 37 **acreage required for normal expansion at a rate**
 38 **not to exceed twenty percent (20%) in any five (5)**
 39 **year period;**

40 **and the additional acreage necessary to meet the**
 41 **requirements of pollution control regulations.**

42 **(5) An encumbrance taken on agricultural land for the**
 43 **purpose of security.**

44 **(6) Agricultural lands acquired by an entity by process**

of law:

(A) in the collection of debts; or

(B) by any procedure for the enforcement of a lien or claim, whether created by mortgage or otherwise;

if all land so acquired must be disposed of within ten (10) years after acquiring the title and if the land so acquired may not be used for farming during the ten (10) year period, except under a lease to a family farm unit, a family farm entity, or an authorized farm entity. The ten (10) year limitation period in this subdivision is a covenant running with the title to the land against any corporate grantee or assignee or the successor of the entity.

(7) A gift of agricultural lands, either by grant or devise, to an entity organized under IC 23-17.

(8) A farm operated for research or experimental purposes if any commercial sales from the farm are incidental to the research or experimental objectives of the entity.

(9) Agricultural land operated by an entity for the purpose of raising breeding stock for resale to farmers or operated for the purpose of growing seed, nursery plants, or sod.

(10) Agricultural lands acquired by an entity solely for the purpose of feeding livestock.

(11) Agricultural land acquired by an entity other than a family farm entity or authorized farm entity for immediate or potential use in nonfarming purposes.

An entity may hold agricultural land in the acreage necessary to its nonfarm business operation, if pending the development of agricultural land for nonfarm purposes, the land may not be used for farming except under lease to a family farm unit, a family farm entity, or an authorized farm entity or except when controlled through ownership, options, leaseholds, or other agreements by an entity that has entered into an agreement with the United States pursuant to the federal New Community Act of 1968 (Title IV of the Housing and Urban Development Act of 1968, 42 U.S.C. 3901-3914), as amended, or a subsidiary or assignee of the entity.

(12) A family farm entity or an authorized farm entity.

Sec. 12. An entity, except a family farm entity, may not

own or operate a hog confinement facility. This restriction does not apply to the acquisition of a hog confinement facility by an entity by process of law in the collection of debts or by any other procedure for the enforcement of a lien or claim.

Sec. 13. A family farm entity does not cease to qualify as a family farm entity as a result of:

(1) a devise or bequest of shares of voting stock; or

(2) a gift of shares of voting stock;

to a person who is entitled to inherit from the donor if the donor were to die intestate.

Sec. 14. An entity engaged in farming or proposing to commence farming in Indiana shall file with the secretary of state a report containing:

(1) the name of the entity and its place of incorporation;

(2) the address of the registered office of the entity in Indiana, the name and address of its registered agent in Indiana, and, in the case of a foreign entity, the address of its principal office in its place of incorporation;

(3) the acreage and location listed by section, township, and county of each lot or parcel of land in Indiana owned or leased by the entity and used for growing crops or keeping or feeding poultry or livestock; and

(4) the names and addresses of the officers and the members of the board of directors of the entity.

Sec. 15. The report of an entity seeking to qualify as a family farm entity or an authorized farm entity must also contain the following:

(1) The number of shares owned by persons residing on the farm or actively engaged in farming, or their relatives within the third degree of kindred.

(2) The name, address, and number of shares owned by each shareholder.

(3) A statement of the percentage of gross receipts of the entity derived from rent, royalties, dividends, interest, and annuities.

Sec. 16. An entity may not begin farming in Indiana until the secretary of state has inspected the report required by this chapter and certified that the entity's proposed operations comply with this chapter.

Sec. 17. (a) Before the first day of the second month

1 after an entity's anniversary month, an entity engaged in
 2 farming in Indiana shall file with the secretary of state a
 3 report containing the information required in this chapter,
 4 based on the entity's operations in the preceding calendar
 5 year and its status at the end of the year.

6 (b) An entity that fails to file a report required by this
 7 chapter or intentionally files false information in any report
 8 required by this chapter is subject to a civil fine of not more
 9 than one thousand dollars (\$1,000).

10 Sec. 18. (a) If the attorney general has reason to believe
 11 that an entity is in violation of this chapter, the attorney
 12 general shall commence an action in the circuit court of the
 13 county where the majority of the agricultural land
 14 suspected of a violation is located. If the court finds that the
 15 agricultural land in question is being held in violation of
 16 this chapter, the court shall enter an order so declaring.

17 (b) The attorney general shall file an issued order under
 18 subsection (a) with the county recorder of each county that
 19 contains land held in violation.

20 (c) An entity owning land held in violation of this
 21 chapter has five (5) years after the date of the order issued
 22 under subsection (a) to divest itself of lands held in
 23 violation. The five (5) year limitation period is a covenant
 24 running with the title to the land against a corporate
 25 grantee, assignee, or the successor of the entity. Any land
 26 not divested after the expiration of the prescribed time must
 27 be sold at public sale in the manner prescribed by order of
 28 the court.

29 SECTION 4. [EFFECTIVE JULY 1, 1999]
 30 Notwithstanding IC 24-4-12, as added by this act, a
 31 corporation or limited liability company that owns, leases,
 32 holds, or otherwise controls agricultural land to be used in
 33 the business of agriculture on July 1, 1999, and is in
 34 violation of IC 24-4-12, as added by this act, must divest
 35 itself before July 1, 2004, of all agricultural land that it
 36 holds in violation. Any land not divested before July 1,
 37 2004, must be sold at public sale."

38 Renumber all SECTIONS consecutively.

(Reference is to HB 1638 as printed February 19, 1999.)

Representative SMITH M

